

UNITED STATES DISTRICT COURT SOUTHERN
DISTRICT OF NEW YORK

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INNOVATUS CAPITAL PARTNERS, LLC,

Plaintiff,

l:18-cv-04252-LLS

- against -

JONATHAN NEUMAN, ANTHONY MITCHELL, RITZ
ADVISORS, LLC, GREG WILLIAMS, DARYL
CLARK, AND AMANDA ZACHMAN,

**INNOVATUS'
RESPONSE TO FIRST
SET OF
INTERROGATORIES**

Defendants.

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MV REALTY PBC, LLC,

Plaintiff,

- against -

INNOVATUS CAPITAL PARTNERS, LLC,

Defendant.

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PLEASE TAKE NOTICE, that, pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Innovatus Capital Partners, LLC (“Innovatus”), plaintiff in the first above-captioned action and defendant in the second above-captioned action, hereby responds to the First Set of Interrogatories of Defendants Jonathan Neuman, Anthony Mitchell, Ritz Advisors, LLC, Greg Williams, Daryl Clark and Amanda Zachman (collectively referred to as the “MV Realty Defendants”) as follows:

1. Describe with specificity the “Business Opportunity” referred to in the NDA and Term Sheet that Innovatus was to disclose following execution, and state which parts, if any, Innovatus believed as of August 24, 2017 (the date of execution) constituted “Confidential

CONFIDENTIAL

Information” as defined in the NDA and Term Sheet (even if Innovatus later learned it was not “Confidential Information”), and its basis for so believing (*i.e.* efforts undertaken by Innovatus, if any, to determine whether it was in fact “nonpublic information,” such as a patent search).

RESPONSE: Innovatus objects to this Interrogatory in that it is vague, overbroad, unduly burdensome and seeks the disclosure of information that is more readily attainable through other, less cumbersome discovery methods. Subject to these objections, and without waiving any other objections available to Innovatus, Innovatus states that the “Business Opportunity” referred to in the NDA and Term Sheet was the opportunity to be the first or one of the first successful participants in the market for Right to List (“RTL”) Transactions with homeowners, whereby homeowners would agree to give a brokerage firm a right of first refusal to list the home for sale at some point in the future. The RTL Transactions would be marketed through established real estate brokers which Innovatus believed was critical in creating the trust that needed to be established between the offering entity and the customer. Based upon discreet market inquiries that Innovatus made with brokers and agents in the real estate business, Innovatus believed that RTL Transactions would be a novel and innovative business, as would the potential securitization or other financing mechanism for such transactions and, in any case, Innovatus’ entry into the market with such a product was confidential. In addition to inquiries with executives and agents in the real estate industry, Innovatus conducted internet searches, and had found no evidence these types of transactions were in the mainstream consciousness or had any commercial traction, or the securitization or other financing methods of such transactions. Innovatus had worked on financial models for the RTL business as a foundational element of the

contemplated business. Innovatus shared this information with the MV Realty Defendants after they signed the Non-Disclosure/Non-Circumvention Agreements (“ND/NCA”).

Innovatus believed these transactions and this market would be very lucrative and concluded that the Defendants in the first above-captioned action and MV Realty would be good partners in the pursuit of this opportunity. The MV Realty Defendants have demonstrated that Innovatus’ strategy was lucrative, as they have executed on the strategy presented to them by Innovatus in violation of their non-circumvention obligations under the ND/NCA the MV Realty Defendants signed.

2. Describe with specificity all “Confidential Information,” which was created on or prior to August 24, 2017 (the date of execution of the NDA and Term Sheet), that Innovatus disclosed to Defendants and/or MV Realty. For each disclosure of “Confidential Information” described in your response, state whether that “Confidential Information” is reflected or referred to in documents that were created on or prior to August 24, 2017, and, if so, identify such documents. To the extent the disclosure was made orally, also identify the date of the disclosure, the individual(s) making the disclosure, and the individual(s) to which it was disclosed.

RESPONSE: Innovatus objects to this Interrogatory in that it is vague, overbroad, unduly burdensome and seeks the disclosure of information that is more readily attainable through other, less cumbersome discovery methods. Subject to these objections, and without waiving any other objections available to Innovatus, Innovatus states that, prior to August 24, 2017, the following confidential concepts and business methodologies for the RTL market were among those developed by Innovatus:

- The fact that, based upon Innovatus' market research, RTL Transactions presented to the market by established real estate brokers were a unique business that had not been successfully attempted by any other parties. Innovatus could find no evidence that the RTL business contemplated by Innovatus was known to or being discussed by real estate brokers or agents, or that any entity had achieved commercial traction with the Innovatus RTL business concept.

- Based upon early pricing research and economic models such as those done by Jae Kim (INNOV0000001- 0000004 and INNOV0000005- 0000008), the RTL business could be very profitable to all involved parties, the real estate brokers, the agents and the financial backers of the business.

- Elements of the RTL agreements as described in detail below and, in particular, the importance of maintaining confidentiality of the business plan among all participants in the venture including the executives, brokers, agents and customers. The ability to achieve a successful first mover status depended upon developing a confidentiality protocol for the RTL program among all of those involved. The emphasis on confidentiality is evident in many of the documents identified in response to Interrogatory 3 below.

- Preliminary ideas relating to pricing and business strategies and methodologies for implementing the RTL business as described below in response to Interrogatory 3 and evidenced by the referenced exhibits.

- The development and utilization of ancillary businesses around the sale of RTL agreements as evidenced by the referenced exhibits below in response to Interrogatory 3.

Innovatus further states that such Confidential Information was provided to the MV Realty Defendants on a confidential basis, both orally and in writing, after August 24, 2017.

3. Describe with specificity all “Confidential Information,” which was created after August 24, 2017 (the date of execution of the NDA and Term Sheet), that Innovatus disclosed to Defendants and/or MV Realty. For each disclosure of “Confidential Information” described in your response, identify the date on which the “Confidential Information” was created, and state whether it was created (i) by Innovatus, (ii) by Defendants and/or MV Realty, or (iii) jointly by the parties. To the extent the disclosure was made orally, also identify the date of the disclosure, the individual(s) making the disclosure, and the individual(s) to whom it was disclosed.

RESPONSE: Innovatus objects to this Interrogatory in that it is vague, overbroad, unduly burdensome and seeks the disclosure of information that is more readily attainable through other, less cumbersome discovery methods. Subject to these objections, and without waiving any other objections, Innovatus states that it shared with the MV Realty Defendants on a confidential basis the information identified in response to Interrogatory Number 3 orally and/or in writing.

Innovatus further states that confidential disclosures were made in the weeks and months after August 24, 2017 to Jon Neumann, Antony Mitchell, Greg Williams, Daryl Clark, Amanda Zachman and other MV Realty personnel who were subject to binding confidentiality and non-circumvent obligations which Innovatus took affirmative measure to ensure. As explained in detail below and shown in the referenced documents, the Confidential Information provided by Innovatus or principally provided by Innovatus fell into the following categories detailed in the paragraphs that follow: (1) the concept of marketing RTL transactions through

established and trusted real estate brokers in the designated markets. It was absolutely essential to use established brokers in order to foster a relationship of trust between the offeror and the customer or the program would not work; (2) Innovatus created and developed the pricing strategies, profit and loss models and other RTL business models that were incorporated into the RTL business—these models were constantly updated and improved upon based on information and research done by Innovatus, including metrics such as a market’s home price appreciation and turnover; (3) Innovatus, and in particular Josh Little of Innovatus, developed the form of RTL agreement which went through multiple iterations. Mr. Little substantially developed the form based upon input by outside counsel and his own research—this complicated exercise had to comply with rules and regulations in the highly regulated real estate brokerage field (which differed in many states) and needed to comply with multiple consumer protection laws and regulations. Several of the bespoke provisions in the RTL Agreement and the thinking behind them are described below; (4) Innovatus was a principal contributor to the “sales pitch or script” to the consumer, another contribution that went through trial and error iterations; (5) Innovatus came up with the idea of beta testing RTL transactions with MV Realty customers and Innovatus (David Schiff, Joe Schottland, Ethan Ard and Josh Little) analyzed that information and shared thinking on what aspects of the RTL transactions and business needed to be refined and improved as shown in the exhibits identified below; (6) Innovatus was the principal contributor to the agents’ agreements and in particular, the confidentiality of those agreements, the structure and different options for broker and agents compensation and incentive compensation and the development of compensation arrangements and confidentiality protocols in the event the agents left the RTL broker/partners of the joint venture; (7) Innovatus researched real estate market

trends, prices of homes in different markets, home buyer and generational trends, turnover data, data mining products to identify most likely buyers and sellers, housing sales in different markets, the Top 30 Expansion Markets, all of which was factored into the business and pricing models created by Innovatus and, (8) Innovatus emphasized the incorporation of confidential protocols throughout the business to protect the work product of Innovatus and the MV Realty Defendants, and the roll out of a successful first mover program including, by insisting on confidentiality stipulations in the agents agreements which were principally drafted by Josh Little, restricting access to the RTL Agreements via unique log-ins, watermarking each RTL Agreement signed by a particular customer so that any unauthorized disclosure of an RTL agreement could be traced back to a specific client, password protection on call sheets and agreement that the RTL business would not be discussed at industry gatherings. The need for confidentiality was explicitly stated in business planning documents circulated among Innovatus and the MV Realty Defendants and described below. Innovatus further states that Innovatus principally drove the development of a viable and effective business plan for the RTL transactions.

- Following the signing of the NDA/NC Agreements and based on research David Schiff and Jae Kim had done prior to August 24, 2017, David Schiff, Joe Schottland and at times, Josh Little, continued to test out whether the contemplated RTL transactions were in the mainstream consciousness of the real estate industry. Among those approached by Innovatus were senior leadership executives at three of the largest real estate brokerage companies in the United States, Realogy (a conglomerate that owned many leading brokers in the industry), Berkshire Hathaway Home Services and Re/Max. The Innovatus team

also spoke to agents who worked for these large brokers and their captive/member companies, to candidates from the real estate brokerage business who applied for positions at the contemplated RTL business entity that would be launched (referred to in internal documents as “NEWCO”), to independent real estate data providers such as Collateral Analytics and Renwood Realty Trac, LLC (d/b/a ATTOM Data Solutions), with whom non-disclosure agreements were executed, and to outside counsel such as Winston & Strawn, Kramer Levin and Foley & Lardner. These discussions confirmed that RTL transaction were not in the mainstream consciousness of the real estate brokerage industry and that no entity had achieved commercial traction with RTL transactions. This information was shared with the MV Realty Defendants and created the impetus to develop a confidential business plan (as shown in the discussion and documents below), under the strictest conditions of confidentiality.

- The creation of the RTL agreements and the research and efforts that went into the creation of the RTL agreements were principally the work product of David Schiff, Joe Schottland and Josh Little. (The final or near-final version of the RTL agreement which was principally developed by Josh Little is attached as (INNOV00000009 - 0000028) Among the specific input into the RTL Agreement included (a) the use of a distinct watermark for each client who signed the RTL, (b) the inclusion of a Confidentiality stipulation ahead of the first paragraph of the RTL Agreement, (c) Sections 2(b), 2(d) and 18 relating to the pricing of termination fees (Innovatus modeled various scenarios and came to a determination of the levels of fees that would work economically and would satisfy consumer protection concerns), (d) Section 3 which had a 50 year term as opposed to a perpetual term, (e) making the RTL obligation subordinate to any mortgage as set forth in Section 5 which had a goal of ensuring

homeowners did not have legal issues with refinancing mortgages or violation of existing mortgages, (f) also providing in Section 5 that the RTL lien was not an interest in real property which might trigger broker self-dealing rules or transfer taxes, (g) Section 7 had a springing lien concept which afforded protection to the broker via the lien but did not interfere with the homeowner's title to the property, (h) Section 12 which provided for a limitation of liability to the brokers, (i) Section 21 which wisely included a non-discrimination stipulation by the broker and the customer, and (j) Section 23 which gave the homeowner the right to rescind within 15 days, which avoided any consumer protection issues. Based on his discussions with and advice from outside counsel, Josh Little drove the drafting of most of the provisions of the RTL Agreement. With input from outside counsel, he was the ultimate decision maker on all legal issues that related to the RTL Agreements and to compliance with applicable laws and regulations—his input is evident in all such decisions. In addition, Mr. Little created an RTL Completion Checklist (INNOV0000029) which described what needed to be done prior to the closing (pull property deed to confirm owner names on deed), and what needed to be done at the closing meeting including confirming name on driver's license matches name on deed, checking and initialing boxes meant for each owner, proper signatures and notarization procedure for the RTL Agreement.

- Josh Little spearheaded and oversaw the legal analyses or opinions with respect to patents, the RTL agreement, applicable laws and regulations or other legal advice rendered in connection with the RTL Agreement or its use within a real estate brokerage. Examples of the legal advice obtained and analyzed by Innovatus are attached as INNOV0000030-0000031 (Winston & Strawn) and INNOV0000032-0000055 (Foley &

Lardner). **INNOV0000030-0000031** reflects early advice David Schiff received from David Galainena of Winston & Strawn that noted the proposal “would appear to work” but lawyers needed to review the realtor code of ethics, regulatory materials and case law, filing of the lien and possible organizational structures including dealing with such issues as the bankruptcy of the broker. The topics covered in **INNOV0000032-0000055**, the Foley & Lardner memorandum included the enforceability of RTL agreements, whether lien rights could be created using the RTL agreements (e.g. in Florida, if the right to record the lien is set forth in the agreement, the licensed real estate broker has the right to record the lien to protect the agreed commission), National Relator Board Ethics/Conduct Rules, Florida broker and ethics rules, RESPA, Consumer Protection laws and other relevant regulations. As shown in these and the other documents identified in this response, going from the RTL idea as conceived by Innovatus to the launch of the business required hard work, intensive and careful planning and advice. Foley & Lardner, Bradley Arant, North Ealing LLC and Kramer Levin were involved in giving Josh Little ongoing advice on intellectual property protection of the RTL concept and business plan.

- Beginning in September and October 2017 Josh Little and Joe Schottland began preparing confidential “Meeting Summaries” which began identifying the tasks that would need to be performed before the business venture could be launched. Examples of these confidential meeting summaries are attached as **INNOV0000056** and **INNOV0000057**. In the early planning of the venture, Josh Little identified the patent, trademark and copyright registration process to be pursued through Foley & Lardner (again confirming that neither Innovatus nor the MV Realty Defendants were aware of any existing patents or commercial exploitation of the RTL concept), creation of the joint venture, closing documents and call

sheets, the RTL Agreement and the need for confidentiality through a confidentiality provision in the RTL agreement and the watermarking of the agreements, and the issues with agents including incentive schemes and protecting confidentiality after the departure of agents. These summaries evolved into “RTL Tracking Sheets,” examples of which are attached as **INNOV0000058 - INNOV0000062**. Josh Little, Joe Schottland and Ethan Ard created RTL tracking sheets which covered such tasks as drafting and revising the form of RTL agreement, creating the standardized sales and closing process for the RTL agreements, researching the intellectual property underpinning the RTL business, creating employment agreements to address the RTL concept and protect confidentiality, creating incentive schemes for agent employment, working on business models for RTL molecule, agent and office economics, developing comprehensive home duration statistics and a predictive model with key drivers, setting up an interim accounting structure to capture and track revenues and costs prior to entering into the formal JV agreement, and developing incentive schemes for managers and agents of the new entity (“NEWCO”) and subsidiary companies and anticipated future leadership. This work product was all part of bringing the RTL business plan to a successful launch and evidences the important contributions of Innovatus to the creation and implementation of the confidential business plan.

- Innovatus also created RTL Issues Lists which assigned tasks to the Innovatus and MV Realty team members and to outside counsel such as creating tracking templates for the RTL transactions, updating the MV analysis model, transmitting agent employment agreements to MV Realty, drafted principally by Innovatus with the assistance of Lowndes, Droskick, Doster, Kantor & Reed, P.A., reviewing the RTL calling script, developing

additional beta tests for identifying prospects for RTLs, creating monthly codification of lessons, identifying early warning signs for non-productive agents, developing a plan for offering loans to real estate buyers and working on developing an appropriate accounting system for RTLs.

Innovatus also began tracking actual RTL customers in order to gather information to improve the RTL business model. (INNOV0000063) is an example of the RTL Tracking List developed by Innovatus.)

- The Tracking and Issues Lists referred to the creation of agent employment agreements. Josh Little again oversaw and worked on drafting these agent agreements which needed to cover compensation and bonus arrangements, commission payments on closings generated by the agent, confidentiality and restrictive covenant provisions and the right to injunctive relief for violating those protective provisions and the agent's post-employment rights to share commissions on harvested RTL transactions. Examples of the "Sales Associate Employment Agreements" that Mr. Little assisted in preparing are INNOV0000064 - 0000069 and INNOV0000070- 0000081.

- Innovatus created and compiled confidential materials and data relating to "Project Horton", the name chosen by Innovatus (from the Dr. Seuss book, *Horton Hears a Who!*) for the RTL project. (The tiny planet of "Whoville" which existed in its entirety on a speck of dust, was there for everybody to see and yet, it could not be seen by anyone until Horton specifically pointed it out—a fitting analogy for RTL transactions). The October 24, 2017 "Discussion Materials" (INNOV0000082-0000091) is stamped "Confidential" on each page and sets forth a definition of the Project Horton business thesis ("a two pronged niche residential brokerage initiative that uses contracted for future listing agreement and leverage to

drive outsized profitability”) and sets forth the objectives of the program (INNOV0000084).

Innovatus then sets forth (a) “Major Milestones” for the first two years of the business INNOV0000085); (b) “Beta Test: Definitional Items” including testing and tracking variables, target clients and approaches, fixed versus variable pricing and how the offering would be presented to prospective clients, the “Script” (INNOV0000086); (c) [REDACTED]

[REDACTED]; (d) Major Milestones: Validate Inducement Idea which included action items such as RTL agreements (assigned to Josh Little and Foley & Lardner), agent NDAs, tracking criteria for testing, agent’s elevator pitch, buyer FAQs, testing and feedback process, underwriting file checklist and IP filings (Trademark, Copyright and Patent)

(INNOV0000088) (the latter item further evidenced the parties lack of knowledge of any existing patents); [REDACTED]; structure of the JV

(INNOV0000090) and a chart that compiled research done by Joe Schottland of Innovatus on the “Top 30 Expansion Markets” (INNOV0000091). The [REDACTED] came from Innovatus. All of the foregoing business plans were confidential and were disclosed to the MV Realty Defendants.

The October 27 “Friday Update” (INNOV0000093 – 0000102) prepared by Innovatus and also marked “Confidential” on each page includes target metrics for brokers including start up and training costs, broker compensation, digital marketing and additional client segments (INNOV0000095); [REDACTED]

[REDACTED]; [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]; Suggested Immediate Actions to “improve the protection of the RTL concept including digitizing the RTL agreements, adding confidentiality clause to the RTL agreements, watermarking the agreements to insure the agreements are not circulated, the esigning and notarization process, discussion of ways to improve IP protection and confidentiality including NDAs for all participating agents, no physical distribution of RTL agreements outside of signatories which would be done digitally with specific log ins, password protection on all call sheets and no discussion of RTL agreements at industry gatherings (INNOV0000098) (Innovatus continued to recommend measures to protect the confidentiality of the RTL venture to insure the successful launch of the business as a first mover in the market and assisted in establishing a successful business venture); methods to simplify and standardize the “call to close process” (INNOV0000099); a discussion of pricing guidelines including different pricing methodologies including whether to “test out a less than 33 Basis Point starting offer” (INNOV00000100); revised agent protocols with “example math” for agent compensation (INNOV00000101); [REDACTED]

[REDACTED]. Other iterations of these confidential business plan discussion documents are INNOV0000103–0000117 and INNOV0000118–0000128 . This is another example of Innovatus marshalling data, using the legal and business talent of Josh Little and the business acumen of David Schiff and Joe Schottland (a former McKinsey partner), analytical input from Ethan Ard and other data inputs in order to create detailed and confidential business plans that were shared with the MV Realty Defendants. *See also*, INNOV0000129–0000130 , (“Project Horton IP Protection Discussion with Foley”), a November 13, 2017 analysis of issues to be presented to Foley & Lardner (jointly retained by Innovatus and Ritz Advisors—a Neuman

entity) prepared and notated by Josh Little covering such topics as patent protection, copyrights, trade secrets and trademarks, confidentiality and NDAs, and online domain registration. The analysis also covers such esoteric topics as “underwriting algorithms” or the creation of “motility profiling using electronic data with proprietary digital probabilistic pricing algorithm”, financing and the integration of underwriting data to create predictive paybacks, “monitoring/surveillance/tracking/servicing of RTL Agreement customers” and enforcement mechanisms including “automated emails with warning or other note when an issue relates to a client’s profile (perhaps from public records) is red flagged” such as death in the family, divorce filing or bankruptcy filing. This confidential work product of Innovatus—which underscored the need for maintaining confidentiality throughout the RTL venture—the creation of underwriting algorithms to improve RTL performance and methods for enforcing the RTL Agreements in a lawful manner were exclusively or principally the confidential work product of Innovatus as shown in these documents. Innovatus worked on creating a detailed blueprint for the business which the MV Realty Defendants stole in violation of the ND/NCA Agreements they signed.

- Innovatus accessed multiple sources of real estate industry information in order to prepare the P&L models and business plans reference above and discussed below. Among the sources reviewed and analyzed principally by Joe Schottland, Josh Little and Ethan Ard were the Real Estate Brokerage Multi-Brand EBIT Benchmark Report (INNOV0000131); the 2015 Home Buyer and Seller Generational Trends (INNOV0000132 – 0000246); Housing Sales by Region from 1963-2017 (INNOV0000247); a September 18, 2017 Modified Real Trends Analysis of the Top 1700 Agent transactions (INNOV0000248-0000600) ; and, two analyses of thousands of real estate transactions entitled “12 Month MLS Data”

(INNOV0000601–0000661) and 12-24 Month MLS Data (INNOV0000662–0000712). The sifting and analysis of this information resulted in reports such as Joe Schottland’s “Observations About the Market” (INNOV0000713–0000717) which was shared with the MV Realty Defendants. Mr. Schottland’s observations about the market focus on Palm Beach County and the historical and recent growth in prices, the local per capita income which had grown faster than the national average, median home price sales, the observation that home sales rise and fall consistent with economic cycles and an analysis of gross commission income and expense by all regions, only RE/MAX all regions, and all brands in Northern California for 2015 and 2016.

- Using information gained by digesting and analyzing real estate market information, Innovatus created and shared with the MV Realty Defendants sophisticated and confidential business models for the RTL business. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- Innovatus even provided to the MV Realty Defendants an analysis of the MV Realty historical financial and agent performance information (INNOV0000731 – 0000732) in which Ethan Ard of Innovatus digests and analyzes this information and provides several insightful conclusions about the MV Realty historical business model such as MV Realty is “losing money, but the top-level numbers are consistent with what the [Innovatus] model expects in the ‘ramp up’ phase”, agent productivity is “well below model estimates, “MV’s track record of hiring, developing and retaining agents falls short of model assumptions”, and an analysis of existing shareholder loans. This type of financial analysis had not been performed by the MV Realty Defendants but Innovatus shared its own analyses with the MV Realty Defendants with the goal of successfully launching the RTL venture in partnership with the MV Realty Defendants. Innovatus also prepared for Defendant Jonathan Neuman an “Analysis of Agent Economics” showing projected agent economics for each MV Realty agent going out 15 months (INNOV0000733-0000762 and INNOV0021570–0021599). Innovatus also prepared two 2017 analyses of MV Realty agents participating in the RTL business with Analyses of Agent Production, Contribution Margins, Comparison of Performance Against Models Created by Innovatus for the RTL Business, Attrition Analyses of Employees, Transaction Analyses and

Office Economics Analyses. (INNOV0000764 and INNOV0001786). Innovatus also shared with the MV Realty Defendants the financing/buydown of the agents' real estate commissions based on bond interest rates and house price growth rates. (INNOV0000763).

- As part of its efforts to continuously update and improve the business plan, Innovatus entered into agreements with data providers in the real estate business to access confidential real estate data. Attached as **INNOV0003896–0003904** is the confidential “Custom Reports Schedule” signed with Renwood Realty Trac on October 12, 2017, **INNOV0003905-0003907** is a detailed Confidential Data License Agreement signed with Renwood, and **INNOV0003908-0003912**, the Non-Disclosure Agreement signed with Collateral Analytics on December 12, 2017. **INNOV0003913–0003918** is a detailed Non-Disclosure Agreement signed with Michael Sklarz. Collateral Analytics prepared at least two reports, both labeled “Confidential and Proprietary”, which are filled with relevant statistical information. The first Collateral Analytics report, **INNOV0003919-0003932**, is entitled “Collateral Analytics Data Mining Product to Identify Highest Probability Home Buyers and Home Sellers” which presents data on identifying the most likely homebuyers for property listings by address and property type, zip code, identification of high “trigger event” potential buyers and ranking qualified buyers. It includes a trigger event model for San Diego County, home purchase propensity indexes for California, Florida and Nevada, household survey data for the same markets, average incomes for homeowners and renters, a sample of average household income for multiple test counties and states, and identifies other data that is available. The second Collateral Analytics report (**INNOV0003933–0003958**) provides a detailed analysis for Palm Beach County which shows among other things, annual turnover rates, annual listing rates,

average prices of condominiums and homes and a host of other information relating to historical sales and turnover in Palm Beach County. The information in these reports, which was shared with the MV Realty Defendants, is clearly confidential information. The information Renwood made available to Innovatus included a report that disclosed, for all of 2016, the total number of transactions, property type, median purchase and median sale prices. (See **INNOV0003896 – 0003904** at page 3 of 3.)

- Innovatus also provided to the MV Realty Defendants a series of confidential Profit and Loss analyses for the RTL business. They ranged from a simple napkin economics document that showed what a single RTL transaction would look like working off the sale price of the property and deducting brokerage commissions to the broker and agent and detailing the economics to all parties involved, and also comparing the RTL transaction to a simple commission arrangement on the sale of a property. (**INNOV0003961**) Innovatus also prepared comprehensive Sample Financial Plans (**INNOV0003962-0004006**) based upon total revenues of \$66,000,000 and \$75,000,000, respectively, which had multiple tabs with financial analysis of such areas as Base Business Revenue Assumptions (and Cost and Operating Expense Assumptions), Economics of a Single RTL Transaction, SPV Economics going out to 2068, Total Revenue Models analyzing all revenues and costs of the business and coming up with EBIT (Earnings Before Interest and Taxes) figures for the planned business. This was supplemented by detailed profit and loss analyses which Innovatus prepared and shared with the MV Realty Defendants. Innovatus has located and identified seventeen different P&L models which have been marked as **INNOV0004007-0021560**. These P&L models prepared over several months had numerous drop down tabs that covered a wide range of financial and

operating areas of concern to the RTL business including, Detailed Analysis of Multi-Office Operations, Agent Economics, Attrition and Cohort Analysis for Agents, Office Economics, Corporate Economics, Investor Economics, Cash Flows and Income Analyses, Survival Tables for Single Family Home Buyers, Investor Returns and Exit Valuations over multi-year periods. These models contain highly confidential information that was put together by Innovatus based upon the research of the real estate markets done by Innovatus and the business expertise of the Innovatus team.

- In creating the financial models and advising the MV Realty Defendants on a sound plan for creating and launching the RTL business—which the MV Realty Defendants, many of whom were in the real estate brokerage business, have admitted they did not know about until Innovatus presented the Business Opportunity to them—the Innovatus team did research, solicited the views of real estate executives and agents and real estate data providers and prepared memoranda, some of which are identified above, and notes to assist in formulating a successful business plan. For example, **INNOV0021561-0021562** reflects Joe Schottland's September 14, 2017 notes after he interviewed an executive at Sotheby's that discusses how real estate brokerages are run, and identifies the largest players in the real estate franchise business including Realogy and its affiliates, Prudential Real Estate, Re/Max International and Real Living Real Estate and discusses the economics of real estate brokerage operations. **INNOV0021563** contains notes based on discussions with Realogy executives which among other information states that 50% of agents produce 90% of a broker's revenue, that implementation of the platform is critical, and how to allocate leads among agents. **INNOV0021564** is a November 22, 2017 update regarding steps that were being taken to set up

the RTL office including the hiring of defendant Daryl Clark as the new CFO. INNOV0021564 reflects Joe Schottland's notes from his de-briefing of three potential clients of MV Realty, Collins, Melissa Green and Pinckney and information related to the clients and the real estate transaction. [REDACTED]

[REDACTED] and INNOV0021566 reflects Joe Schottland's notes from his interviews of MV Realty executives and agents. INNOV0021567-0021569 reflects Mr. Schottland's April 18, 2018 notes from his discussion with Steve Murray of RealTrends, a real estate data firm which discusses attractive target markets, target brokerage characteristics, the practices of Re/Max in handling agents, predictive analytics providers and then the practices of major brokers such as Houlihan Lawrence, Berkshire Hathaway, Realogy, Weichert Realty, Realty One, Homesmart and others, in commission sharing with agents and database ownership.

PLEASE TAKE FURTHER NOTICE, that Innovatus reserves the right to amend any of the foregoing responses prior to the trial of this matter.

Dated: New York, New York
July 24, 2020

/s/ Edward P. Grosz
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VERIFICATION

Pursuant to 28 U.S.C. 1792, Joseph Sabatelli, under penalty of perjury, declares to the truth of the following statement:

I am a partner in the law firm Capital Partners, L.P. ("Capital") and am an FCM, derivatives dealer, and defendant in the pending above-captioned action. I have read the Complaint brought to the U.S. District Court for the Southern District of New York, the caption of which is the title of my knowledge, charge as to the matters described in the Complaint, believe the facts and allegations therein to be true. The information contained herein is true to the best of my knowledge, belief, and information, and I believe the same to be true. This information is based on my review of documents, books and records.

Executed on 1 October 2020 at New York, New York Pursuant to 28 U.S.C. § 1792.


JOSEPH SABATELLI

Dated: New York, New York
on 10/1/2020